

BILL LOCKYER, Attorney General
of the State of California
JOSE R. GUERRERO,
Supervising Deputy Attorney General
VIVIEN H. HARA, State Bar No. 84589
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Telephone: (415) 703-5513
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. ID 2006 64545

JOHN KAVAYIOTIDIS
39201 State Street
Fremont, CA 94538

A C C U S A T I O N

Physical Therapist License No. PT 9250

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about August 15, 1979, the Physical Therapy Board of California issued Physical Therapist License Number PT 9250 to John Kavayiotidis ("Respondent"). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

“The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.”

5. Section 2630 of the Code states:

“It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

“Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500). A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide , excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as,

1 and in proximity to, the location where the aide is performing patient-related tasks, and
2 shall be readily available at all times to provide advice or instruction to the aide. When
3 patient-related tasks are provided to a patient by an aide, the supervising physical
4 therapist shall, at some point during the treatment day, provide direct service to the
5 patient as treatment for the patient's condition, or to further evaluate and monitor the
6 patient's progress, and shall correspondingly document the patient's record.

7 “The administration of massage, external baths, or normal exercise not a part of a
8 physical therapy treatment shall not be prohibited by this section”.

9 6. Section 2660 of the Code states:

10 “The board may, after the conduct of appropriate proceedings under the
11 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
12 impose probationary conditions upon, or issue subject to terms and conditions any
13 license, certificate, or approval issued under this chapter for any of the following causes:

14 . . .

15 (i) . . . violating, or attempting to violate, directly or indirectly, or
16 assisting in or abetting the violating of, or conspiring to violate any provision or
17 term of this chapter or of the State Medical Practice Act.

18 (j) The aiding or abetting of any person to violate this chapter or any
19 regulations duly adopted under this chapter.

20 (k) The aiding or abetting of any person to engage in the unlawful practice
21 of physical therapy.

22 7. Section 2655 of the Code states:

23 “As used in this article:

24 (a) "Physical therapist" means a physical therapist licensed by the board.

25 (b) "Physical therapist assistant" means a person who meets the
26 qualifications stated in Section 2655.3 and who is approved by the board to assist ///

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1 in the provision of physical therapy under the supervision of a physical therapist
2 who shall be responsible for the extent, kind, and quality of the services provided
3 by the physical therapist assistant.

4 (c) "Physical therapist assistant" and "physical therapy assistant" shall be
5 deemed identical and interchangeable.

6 8. Section 2655.2 of the Code states:

7 "A physical therapist shall not supervise more physical therapist assistants
8 at any one time than in the opinion of the board can be adequately supervised.
9 Two physical therapist assistants shall be the maximum number of physical
10 therapist assistants supervised by a physical therapist at any one time, but the
11 board may permit the supervision of a greater number by a physical therapist if, in
12 the opinion of the board, there would be adequate supervision and the public's
13 health and safety would be served. In no case, however, shall the total number of
14 physical therapist assistants exceed twice the number of physical therapists
15 regularly employed by a facility at any one time."

16 9. Section 2655.7 of the Code states:

17 "Notwithstanding Section 2630, a physical therapist assistant may assist in
18 the provision of physical therapy service provided the assistance is rendered under
19 the supervision of a physical therapist licensed by the board."

20 10. Section 2655.92 of the Code states:

21 "The board may adopt regulations as reasonably necessary to carry out the
22 purposes of this article. The board shall adopt a regulation formulating a
23 definition of the term "adequate supervision" as used in this article."

24 11. Section 1398.44 of Title 16 of the California Code of Regulations states:

25 "1398.44. Adequate Supervision Defined.

26 "A licensed physical therapist shall at all times be responsible for all physical
27 therapy services provided by the physical therapist assistant. The supervising
28 physical therapist has continuing responsibility to follow the progress of each

1 patient, provide direct care to the patient and to assure that the physical therapist
2 assistant does not function autonomously. Adequate supervision shall include all
3 of the following:

4 (a) The supervising physical therapist shall be readily available in person
5 or by telecommunication to the physical therapist assistant at all times while the
6 physical therapist assistant is treating patients. The supervising physical therapist
7 shall provide periodic on site supervision and observation of the assigned patient
8 care rendered by the physical therapist assistant.

9 (b) The supervising physical therapist shall initially evaluate each patient
10 and document in the patient record, along with his or her signature, the evaluation
11 and when the patient is to be reevaluated.

12 (c) The supervising physical therapist shall formulate and document in
13 each patient's record, along with his or her signature, the treatment program goals
14 and plan based upon the evaluation and any other information available to the
15 supervising physical therapist. This information shall be communicated verbally,
16 or in writing by the supervising physical therapist to the physical therapist
17 assistant prior to initiation of treatment by the physical therapist assistant. The
18 supervising physical therapist shall determine which elements of the treatment
19 plan may be assigned to the physical therapist assistant. Assignment of these
20 responsibilities must be commensurate with the qualifications, including
21 experience, education and training, of the physical therapist assistant.

22 (d) The supervising physical therapist shall reevaluate the patient as
23 previously determined, or more often if necessary, and modify the treatment, goals
24 and plan as needed. The reevaluation shall include treatment to the patient by the
25 supervising physical therapist. The reevaluation shall be documented and signed
26 by the supervising physical therapist in the patient's record and shall reflect the
27 patient's progress toward the treatment goals and when the next reevaluation shall
28 be performed.

1 (e) The physical therapist assistant shall document each treatment in the
2 patient record, along with his or her signature. The physical therapist assistant
3 shall document in the patient record and notify the supervising physical therapist
4 of any change in the patient's condition not consistent with planned progress or
5 treatment goals. The change in condition necessitates a reevaluation by a
6 supervising physical therapist before further treatment by the physical therapist
7 assistant.

8 (f) Within seven (7) days of the care being provided by the physical
9 therapist assistant, the supervising physical therapist shall review, cosign and date
10 all documentation by the physical therapist assistant or conduct a weekly case
11 conference and document it in the patient record. Cosigning by the supervising
12 physical therapist indicates that the supervising physical therapist has read the
13 documentation, and unless the supervising physical therapist indicates otherwise,
14 he or she is in agreement with the contents of the documentation.

15 (g) There shall be a regularly scheduled and documented case conference
16 between the supervising physical therapist and physical therapist assistant
17 regarding the patient. The frequency of the conferences is to be determined by the
18 supervising physical therapist based on the needs of the patient, the supervisory
19 needs of the physical therapist assistant and shall be at least every thirty calendar
20 days.

21 (h) The supervising physical therapist shall establish a discharge plan. At
22 the time of discharge, or within 7 (seven) days thereafter, a supervising physical
23 therapist shall document in the patient's record, along with his or her signature, the
24 patient's response to treatment in the form of a reevaluation or discharge
25 summary.”

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12. Section 1399 of Title 16 of the California Code of Regulations states:

1399. Requirements for Use of Aides.

“A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing non-patient related tasks, or by performing patient related tasks.

(a) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient related tasks as defined below.

(2) A "non-patient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions.

(b) "Under the orders, direction and immediate supervision" means:

(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record.

(2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.

(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and

1 in immediate proximity to the location where the aide is performing patient
2 related tasks, and shall be readily available at all times to provide advice or
3 instruction to the aide. When patient related tasks are provided a patient by an aide
4 the supervising physical therapist shall at some point during the treatment day
5 provide direct service to the patient as treatment for the patient's condition or to
6 further evaluate and monitor the patient's progress, and so document in the
7 patient's record.

8 (5) The physical therapist shall perform periodic re-evaluation of
9 the patient as necessary and make adjustments in the patient's treatment program.
10 The re-evaluation shall be documented in the patient's record.

11 (6) The supervising physical therapist shall countersign with their
12 first initial and last name, and date all entries in the patient's record, on the same
13 day as patient related tasks were provided by the aide.

14 13. Section 2661.5 (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the
16 board, the board may request the administrative law judge to direct any licensee
17 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
18 actual and reasonable costs of the investigation and prosecution of the case."

19 **WASHINGTON OUTPATIENT REHABILITATION CENTER**

20 _____ 14. Respondent was the owner and/or director of Washington Outpatient
21 Rehabilitation Center ("WORC") in Fremont, California for the period relevant herein, the years
22 2001 through 2003. During this period, WORC employed five to six physical therapists on
23 various schedules, two to three physical therapist assistants, and several physical therapy aides.
24 As director, respondent was responsible for assuring that his staff was complying with the laws
25 governing the practice of physical therapy in the State of California. During the period in
26 question, respondent "ran" the business and hired and fired personnel. WORC provided
27 contracted physical therapy services to Washington Hospital. Respondent did not treat patients
28 or work on the clinic premises

FIRST CAUSES FOR DISCIPLINE

15. On or about April 21, 2003, the Physical Therapy Board of California received a complaint from John Nativo, Physical Therapy Advisor, Blue Shield of California, alleging that documentation submitted by WORC to Blue Shield of California, which included billing for physical therapy services provided by physical therapist assistants, indicated that said assistants were providing physical therapy to patients without required supervision by physical therapists. The Department of Consumer Affairs, Division of Investigation (“DOI”) thereafter conducted an investigation on behalf of the Board.

16. DOI investigators conducted interviews with the available personnel at WORC. On December 12, 2003, DOI investigator Patricia Banks-McBam along with Board consultant Dennis M. Ellingson, M.S., P.T. (License No. PT 6619, issued December 13, 1973) conducted an on-site audit at WORC. Respondent was present at this audit. Checking appointment calendars for the past two to three years, Mr. Ellingson randomly selected 14 patient charts corresponding to each individual practitioner. His findings on these charts, in pertinent part, were as follows:

Patient #1. Initial Evaluation done by Sandhya Dharmadas, PT:

- * 7/1, 7/3, 7/8, 7/15, and 7/22/03 visit notes recorded and signed by James Tumanda, physical therapist assistant (“PTA”) only. No co-signatures.

Patient #4: Initial Evaluation done by Tricia Fong, PT:

- * 10/29, 11/3, 11/5, 11/12, 11/14, 11/17, and 11/19/03 visit notes recorded and signed by PTA Tumanda only. No co-signatures.
- * 11/20/03: Progress summary/discharge note recorded and signed by PTA Tumanda with co-signature of Tricia Fong, PT.

Patient #6: Initial Evaluation done by Amy Knight, PT:

- * 1/13/03 visit note by PTA Tumanda only. No co-signatures.
- * 1/23/03 progress summary/discharge summary recorded and signed by PTA Tumanda only.

1 Patient #9: Initial Evaluation done by Doug McHargue, PT:
2 * 4/25 - 5/13/02 visit notes, progress summaries, and discharge
3 summaries all recorded and signed by PTA Tumanda only
4 (12 visits).
5 Patient #10: Initial Evaluation done by Amy Knight, PT:
6 * 3/8, 3/20, 3/25, 3/27, 4/1, 4/3, 4/8, and 4/10/2003 visit notes and
7 progress summary recorded and signed by Michael Kwong, PTA
8 only. No co-signatures.
9 Patient #11: Initial Evaluation done by Sandhya Dharmadas, PT:
10 * 12/20 and 12/31/02 visit notes recorded and signed by PTA
11 Tumanda only. No co-signatures.
12 Patient #12: No PT did Initial Evaluation
13 * Initial Evaluation recorded and signed by PTA Tumanda only.
14 * 2/3, 2/10, 2/19, and 3/3/03 visit notes and progress summary by
15 PTA Tumanda only. No co-signatures.
16 Patient #13: Initial Evaluation done by Amy Knight, PT:
17 * 6/14 - 9/18/02 visit notes recorded and signed by PTA Tumanda
18 only. No co-signatures.
19 * 7/24, 8/7, and 10/14/02 progress summaries recorded and signed
20 by PTA Tumanda. Co-signed by Amy Knight, PT.
21 Patient #14: Initial Evaluation unsigned.
22 * 10/31/01 - 4/3/02 visit notes recorded and signed by PTA Tumanda
23 only. No co-signatures. (27 visits)
24 * 4/30/02 - 5/23/03 visit notes recorded and signed by PTA Tumanda
25 only. No co-signatures. (85+ visits)
26 * 8/15/02 progress summary recorded and signed by PTA Tumanda.
27 Co-signed by Amy Knight PT.
28 * 12/3/02 evaluation recorded and signed by PTA Tumanda only.

* 12/6/01, 2/15/02, 1/3/03, 2/28/03, 5/29/03 progress summaries
recorded and signed by PTA Tumanda only.

17. According to the findings on these charts, WORC as a physical therapy clinic allowed physical therapist assistants, mainly PTA Tumanda, to function independently as a physical therapist without consistent supervision by a supervising physical therapist. PTA's performed treatments without co-signatures or regularly scheduled meetings with the supervising physical therapist on each patient treated and would perform, record, and sign initial evaluations, progress reports, and even discharge summaries, which can only be done by a physical therapist. These are violations of Business and Professions Code sections 2630 and 2660(i), (j) and/or (k) and of Title 16 California Code of Regulations sections 1398.44(b), (c), (d), (e), (f), (g), and/or (h).

18. Interviews with the professional staff of WORC confirmed that these practices were standard operating procedure at the clinic and that each of them had been "trained" in clinic procedures at the outset of their employment by existing office staff. Patient assignments and professional schedules were made and maintained by the office manager. Respondent hired and fired personnel and contracted for clinic services with Washington Hospital, but was seldom on the premises, nor did he regularly monitor, oversee, or adjust the day to day functions of the clinic. Respondent, as director of the clinic, was responsible for its functioning according to the laws governing the practice of physical therapy, and as such, respondent has aided and abetted the unlicensed practice of physical therapy by physical therapist assistants, and causes for discipline exist under Business and Professions Code section 2660(j) and (k).

SECOND CAUSES FOR DISCIPLINE

19. At the 12/12/03 audit, Mr. Ellingson also randomly reviewed the work schedules of the physical therapists, physical therapist assistants, and physical therapy aides and found as follows:

A. On 6/21/02, PTA Tumanda had 45 patients on his schedule. No other professional staff person worked on the premises that day. Physical therapy aides

1 Brandi Anderson, Andrew Goodall, Rupert Law, and Kristina Galvez also worked that
2 day. There was no direct supervision of these aides by a physical therapist, and PTA
3 Tumanda or others on the office staff such as front office personnel Gina Perales or
4 Alicia Stephens must have assigned tasks to and/or supervised the aides that day. There
5 was no documentation in the records of the patients seen that day or in any other office
6 records of any tasks performed by physical therapy aides.

7 B. On 7/1/02, PT Knight had 31 patients and 5 evaluations, and PT
8 Dharmadas had 11 patients and 6 evaluations. They worked with office manager
9 Kristine Galvez and physical therapy aides Kristine Galvez, Brandie Alderson,
10 Rupert Lao, and Andrew Goodall. There was no documentation in the records of the
11 patients seen that day or in any other office records of any tasks performed by physical
12 therapy aides.

13 C. On 2/7/03, PTA Tumanda had 31 patients on his schedule, and PT
14 Dharmadas had 22. Physical therapy aides Kristine Galvez, Andrew Goodall, Rupert
15 Lao, and Krystal Gamab were also working that day. There was no documentation in
16 the records of the patients seen that day or in any other office records of any tasks
17 performed by physical therapy aides.

18 20. According to these findings, WORC failed to document direct supervision
19 of physical therapy aides by physical therapists and document the activities of these aides in the
20 patient charts or in other office records. Also, at least on 6/21/02, PTA Tumanda was apparently
21 responsible for supervising the aides, since no physical therapist was on the premises that day.
22 By law, physical therapy aides must be directly supervised by a physical therapist. These are
23 violations of Business and Professions Code section 2630 and Title 16 California Code of
24 Regulations sections 1399(b)(1), (2), (3), and/or (4).

25 21. Interviews with professional personnel at WORC confirmed that the
26 failure to document the use of aides and the failure to have physical therapists directly supervise
27 the activities of physical therapy aides were standard operating procedure at the clinic and that
28 they were “trained” in these office procedures by existing clinic staff at the outset of their

1 employment. Respondent, as director of the clinic, was responsible for its functioning in
2 conformance with the laws governing the practice of physical therapy, and as such, he has aided
3 and abetted the unlicensed practice of physical therapy by physical therapist assistants and
4 physical therapy aides, and therefore cause for discipline exists under Business and Professions
5 Code section 2660(j) and (k).

6 **COST RECOVERY**

7 22. As a result of the complaint against WORC and the DOI investigation and
8 audit of WORC, charges were filed against four (4) physical therapists and (2) physical therapist
9 assistants at WORC alleging inadequate supervision, the unlicensed practice of physical therapy
10 and the aiding and abetting thereof, based upon the records reviewed in the DOI audit of
11 12/12/03 and on the complaint of John Nativo and his review of two patient charts at WORC.
12 Three of these physical therapists and the assistants have acknowledged their individual
13 violations of the Physical Therapy Practice Act and have received appropriate discipline for their
14 individual violations. The investigation costs of each of these employees of WORC, who were
15 hired and trained under the auspices of respondent, are part and parcel of the overall investigation
16 of WORC and of respondent, and therefore, the reasonable costs of investigation of these
17 individuals are hereby assessed against respondent.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

- 1. Revoking or suspending Physical Therapist License Number PT 9250, issued to JOHN KAVAYIOTIDIS;
- 2. Ordering JOHN KAVAYIOTIDIS to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
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- 3. Taking such other and further action as deemed necessary and proper.

DATED: November 3, 2006

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant